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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

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Notice of Availability of the Record of Decision and Final Supplemental Environmental Impact Statement for the Ruby Pipeline Project in Oregon, Nevada, Utah, and Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM) has prepared a Record of Decision (ROD) and Final Supplemental Environmental Impact Statement (EIS) for the Ruby Pipeline Project (Project) and by this notice is announcing their availability.

ADDRESSES: A list of locations where copies of the ROD and Final Supplemental EIS are available can be found under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Mark Mackiewicz, PMP, Project Manager at 435-636-3616, BLM Price Field Office, 125 South 600 West, Price, UT 84501; email mmackiew@blm.gov.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to

leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM has issued the ROD concurrent with the Final Supplemental EIS, as allowed under 40 CFR 1506.10(b).

The ROD documents the BLM's decision to reissue the right-of-way granted for the Project. The BLM will not require additional post-construction mitigation or changes to the grant issued on July 12, 2010. All elements of the July 12, 2010, ROD and subsequent decisions remain in full force and effect, including all stipulations, monitoring, and mitigation measures. The ROD is based on the analyses contained in the Final EIS, the Draft Supplemental EIS, and the Final Supplemental EIS for the Project. It also relies on the U.S. Fish and Wildlife Service's (FWS) Revision to the June 8, 2010, Ruby Pipeline Biological Opinion (BiOp). The Revised BiOp was published on July 5, 2013, and is posted on the Federal Energy Regulatory Commission's (FERC) website (www.ferc.gov). The ROD, Final Supplemental EIS, and Revised BiOp were developed in response to an order from the 9th U.S. Circuit Court of Appeals.

The project has been constructed and is currently in operation. In 2011, the Center for Biological Diversity, Defenders of Wildlife, and the Summit Lake Paiute Tribe, among other entities, filed petitions for review of the 2010 BiOp and the BLM's ROD in the 9th U.S. Circuit Court of Appeals, Case Nos. 10-72356, 10-72552, 10-72762, 10-72768, and 10-72775 (consolidated). In October 2012, the court denied most of the petitioners' claims, including all claims brought under the National Historic Preservation Act, FLPMA, and the Clean Water Act, but found the 2010 BiOp and BLM ROD to be inadequate.

In a published opinion, the court vacated the 2010 BiOp and remanded the matter to the FWS. The court held that the FWS' consideration of Ruby's Endangered Species Act (ESA) Conservation Action Plan (CAP) as cumulative effects in the 2010 BiOp was arbitrary and capricious. The court also found that the 2010 BiOp did not adequately consider whether groundwater withdrawals associated with hydrostatic testing and dust abatement would impact listed fish that occur in surface waters. The court vacated the BLM's ROD because it relied on the 2010 BiOp and remanded the matter to the BLM.

In an unpublished opinion, the court found that the Final EIS for the Project did not provide sufficient quantified or detailed data about the cumulative loss of sagebrush steppe vegetation and habitat and did not provide information on how much acreage sagebrush steppe used to occupy, or what percentage has been destroyed. Thus, the court remanded the ROD to the BLM for further analysis of cumulative impacts to sagebrush steppe vegetation and habitat. The court subsequently stayed vacature of the 2010 BiOp until the FWS issued the Revised BiOp and stayed vacature of the ROD until the BLM issues a new ROD.

The 2010 BiOp found that the proposed action was not likely to jeopardize the continuing existence of any of the listed species or result in destruction or adverse modification of designated critical habitats. The findings of the Revised BiOp are consistent with those reached in the 2010 BiOp.

The FWS also affirmed the accuracy of the incidental take statement found in the 2010 BiOp and incorporated it by reference. Those conclusions were drawn without consideration of or reliance on the ESA CAP. The conservation recommendations described in the 2010 BiOp were reviewed by the FWS, were determined to stand as

written, and were incorporated by reference. The court did not rule that the discussion of the conservation agreement or groundwater extraction in the Final EIS was deficient or in violation of NEPA, so these topics are not analyzed in the Supplemental EIS.

In the Final EIS, Draft Supplemental EIS, and Final Supplemental EIS, the BLM provided quantified and detailed data regarding the cumulative loss of sagebrush steppe vegetation and habitat, including information on how much acreage sagebrush steppe used to occupy, and what percentage has been lost. The Ruby Pipeline Project's direct and indirect impacts remain the same as those discussed in the Final EIS. The Final Supplemental EIS thoroughly discusses the cumulative impacts to sagebrush steppe habitat within the cumulative impact area and summarizes the substantial mitigation required by the BLM's July 12, 2010, ROD (and FERC's Certificate). The mitigation measures required by the July 12, 2010, ROD are intended to address the significant long-term impacts to sagebrush steppe habitat related to the Project. All elements of the July 12, 2010, ROD and subsequent BLM decisions remain in full force and effect, including all stipulations, monitoring, and mitigation measures. Those same stipulations, monitoring, and mitigation measures are required by this ROD. The BLM concludes that those mitigation measures are adequate and additional mitigation measures are not required.

The BLM published a Notice of Availability of the Draft Supplemental Environmental Impact Statement for the Ruby Pipeline Project on July 5, 2013 (78 FR 40496). The release of the Draft Supplemental EIS initiated a formal 45-day public comment period that ended on August 19, 2013.

The BLM received 31 comment submissions on the Draft Supplemental EIS from the public, agencies, tribes, organizations, and businesses during the comment period. Substantive comments were considered during preparation of this Final Supplemental EIS. Comments resulted in the addition of clarifying text, but did not significantly change the analysis or the proposed decisions.

Filing an Appeal: Instructions for filing an appeal of this Decision are described in the ROD.

Copies of the ROD and Final Supplemental EIS for the Ruby Pipeline Project are available for public inspection at the following BLM offices:

- Kemmerer Field Office, 312 Highway 189 North, Kemmerer, WY
- Salt Lake Field Office, 2370 South 2300 West, Salt Lake City, UT
- Elko District Office, 3900 East Idaho Street, Elko, NV
- Winnemucca District Office, 5100 East Winnemucca Boulevard, Winnemucca, NV
- Lakeview District Office, 1301 South G Street., Lakeview, OR
- Klamath Falls Resource Area Office, 2795 Anderson Avenue, Suite 25, Klamath Falls, OR
- Surprise Field Office, 602 Cressler Street, Cedarville, CA
- Additional locations where printed copies of the ROD/Final Supplemental EIS can be viewed can be found on the Project website

(http://www.blm.gov/nv/st/en/info/nepa/ruby_pipeline_project.html) or by contacting the project manager.

Authority: 40 CFR 1502.9, 43 CFR 2880.

Marci L. Todd,
Associate State Director, Nevada.

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